IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 22 OF 2000 WITH
MISCELLANEOUS CIVIL APPLICATION NO. 289 OF 2005

1. Shantaram Shanker Bhagat,
   son of late Shanker Bhagat,
   major in age, Agriculturist;

2. Shri Babu Shanker Bhagat,
   son of late Shanker Bhagat,
   major in age, Agriculturist,

   both r/o H.No.127, Bhagatwada,
   Nagarcem-Canacona, Goa. .... Appellants/Applicants.

V/s.

1. Special Land Acquisition Officer,
   South-Goa, K.R.C.L.,
   Amey Guest house, Davorlim Road,
   P.O. Navelim, Salcete-Goa.

2. The Chief Engineer,
   K.R.C.L., 4th Floor, Souza Towers,
   Church Square, Panaji-Goa .... Respondents

Shri P. A. Kamat, advocate for the appellants.

Shri E. Afonso, advocate for the respondent no.1.

CORAM : R.M. LODHA, J.

DATE : 16th September, 2005.

ORAL JUDGMENT

This First Appeal is directed against the Judgment and

Award dated 23rd July, 1999 passed by the District Judge, South Goa, Margao (Reference Court), in Land Acquisition Case No.94/95.

2. A large tract of land was acquired for the purposes of new Broad Guage Line for Konkan Railway pursuant to Notification under Section 4 of the Land Acquisition Act, 1894 that was published in the Official Gazette on 4th July, 1991. This Appeal concerns that acquisition of land ad measuring 1102 sq. mts. from survey nos.105/13 and 95/6 of Chaudi village of Canacona Taluka. Alongwith the aforesaid land, land out of various other survey numbers situated at Chaudi village, Canacona, was acquired pursuant to the Notification afore-referred. Out of 1102 sq. mts. of land, the appellants were owners of 307 sq. mts. of the land bearing survey no.105/13 and they were tenants of one Ramdeo Swami Partagal in respect of an area of 795 sq. mts. from survey no.95/6. For the compulsory acquisition of the aforesaid land of 1102 sq. mts., the Special Land Acquisition Officer awarded compensation at the rate of Rs.9/- per sq. mt. The appellants were held entitled to 60% of the compensation and the owner Ramdeo Swami Partagal was held entitled to 40%

compensation. The appellants aggrieved by the inadequate compensation awarded by the Special Land Acquisition Officer, sought reference and the matter was referred to the Court of the District Judge, South Goa, Margao. The appellants claimed the compensation at the rate of Rs.120/- per sq. mt. They set up the case that the acquired land was two crop land. Before the Reference Court, the appellants produced the Sale Deed dated 31st October, 1988 in relation to the plot of land ad measuring 1300 sq. mts. situated at Gullem within the municipal limits of Canacona. In support of their claim for enhancement of compensation, the appellants examined Agnelo Estevo Barreto, as A.W.1 and Shantaram Bhagat (appellant no.1), as A.W.2.

3. The respondents contested the appellants' claim and examined Abhay Dhuri (R.W.1).

4. The Reference Court held that the Sale Deed dated 31st October, 1988 relied upon by the appellants for enhancement of compensation cannot be the basis for the determination of the market value of the acquired land. The evidence of A.W.1 and A.W.2 was found not acceptable. The Reference Court also observed that the claimants did not come to the Court with clean

hands and they suppressed the fact that they were tenants in respect of land ad measuring 795 sq. mts. bearing survey no.95/6 and were absolute owners only in respect of 307 sq. mts. of land bearing survey no. 105/13. Consequently, the Reference Court by the Judgment and Award dated 23rd July, 1999, rejected the reference. Aggrieved thereby, the present appeal has been preferred.

5. The appellants have made Miscellaneous Civil Application no.289 of 2005 for production of additional evidence. The additional evidence that is sought to be produced by the appellants is in the nature of awards passed by the Reference Court in respect of the lands acquired under the same Notification and similarly situated lands close-by and the Judgments of this Court in various First Appeals arising out of the said awards. By the Order dated 15th April, 2005, the Miscellaneous Civil Application was ordered to be taken up alongwith the Appeal.

6. Mr. E. Afonso, the learned counsel for the respondent no.1, did not dispute that the awards and the Judgments sought to be produced by way of additional evidence relate to the award of compensation in respect of the lands that were acquired under the

same Notification and the similarly situated lands.

7. The learned counsel for the respondent no.1 thus did not have any objection to the consideration of the additional evidence. He did not express any desire to produce any evidence in rebuttal to the additional evidence.

8. The Awards and the Judgments referred to in the application are, therefore, taken on record and treated as part of evidence.

9. The additional evidence taken on record is highly relevant and rather clinching for the decision in the appeal. Though various awards have been placed on record by way of additional evidence, suffice to refer to the two awards viz., the awards in Land Acquisition Case No.107/95 and Land Acquisition Case No.132/95.

10. Adverting to the award passed by the Reference Court in Land Acquisition Case No.132/95 first, I find that the said case related to acquisition of 415 sq. mts. of land. That land is from survey no.84/5 situated at Chaudi village of Canacona taluka. The said land was acquired pursuant to the Notification under Section 4 of the Land Acquisition Act 1894, published in the Official

Gazette on 4th July, 1991. That was a case where like the case in hand the Special Land Acquisition Officer awarded compensation at the rate of Rs.9/- per sq. mt. and the claimant sought enhancement from the Reference Court. Without any doubt, the acquisition of the subject land and the acquisition of land in Land Acquisition Case No.132/95 was under the same Notification and for the same public purpose and situated in the same village. There is no dissimilarity between the subject land and the land that was the subject-matter of consideration in Land Acquisition Case No.132/95. As a matter of fact, the learned counsel for the respondents did not dispute this position; the similarity of the land in Land Acquisition Case No.132/95 and the subject land was not questioned. The Reference Court namely the District Judge, South Goa, Margao, fixed the market value of the acquired land at Rs.24/- per sq. mt. and awarded the benefits of solatium and interest as provided in law. The Judgment of the Reference Court dated 8th July, 1999 in Land Acquisition Case No.132/95 was the subject-matter of challenge before this Court in First Appeal No.121/99. The learned Single Judge of this Court disposed of the group of First Appeals including First Appeal No.121/99 by the

Judgment dated 1st April, 2005. The learned Single Judge modified the award of the Reference Court and reduced the compensation at the rate of Rs.19/- per sq. mt. The learned counsel for the respondent no.1 could not demonstrate nor could he put forth any explanation that the rate of Rs.19/- per sq. mt. fixed by this Court in First Appeal No.121/99 arising out of Land Acquisition Case No.132/99 for acquisition of land similarly situated under the same Notification, should not be made applicable to the subject land.

11. Similarly, in Land Acquisition Case No.107/95, the Reference Court was concerned with the land ad-measuring 3960sq. mts. from survey no.87/1 of Chaudi village. That was acquired under the same Notification for the same purpose, namely the construction of new Broad Guage Line, Konkan Railway. In respect of that land also, the Special Land Acquisition Officer awarded the compensation at the rate of Rs.9/- per sq. mt. However, the Reference Court enhanced the compensation from Rs.9/- per sq. mt. to Rs.24/- per sq. mt. and awarded the other statutory benefits of solatium and interest to the claimants by Judgment and Award dated 24th February, 2000. The said

Judgment and Award dated 24th February, 2000 was also under challenge before this Court in First Appeal No.108/2000. The learned Single Judge of this Court disposed of the said Appeal alongwith few other appeals which were connected vide Judgment dated 31st March, 2005 and fixed the market value of that land at the rate of Rs.19/- per sq. mt. The learned counsel for the respondents with regard to the Judgment of the Reference Court dated 24th February, 2000 in Land Acquisition Case No.107/95 and the Judgment of this Court in First Appeal No.108/2000 delivered therein on 31st March, 2000 could not demonstrate any dissimilarity between the subject land and the land that was subject matter of consideration in the aforesaid Land Acquisition Case and the First Appeal.

12. There are other awards and the Judgments of this Court in First Appeals in respect of the land acquired under the same Notification situated similarly, but it is not necessary to multiply the said Judgments. Even if the Reference Court was not persuaded to accept the Sale Deed dated 15th October, 1988 relied upon by the appellants before the Reference Court, in the light of the Judgments of this Court in the afore-referred First Appeals in

respect of the land acquired under the same Notification for the same public purpose and similarly situated, I find no justification why the market value of the subject land should not be fixed at Rs.19/- per sq. mt.

13. The observations of the Reference Court that the claimants did not come to the Court with clean hands may be justified to the extent that they did not specify as to for how much land they were owners and for how much land they were tenants but that does not justify denial of market value of the acquired land. In the land where the claimants were tenants, they would obviously get proportionate compensation.

14. For the reasons indicated above the market value of the subject land is fixed at the rate of Rs.19/- per sq. mt., (rupees nineteen per sq. mt.). I find myself in agreement with the reasons indicated by this Court in the Judgment dated 31st March, 2005 in a group of First Appeals, including First Appeal No.110/2000 and the Judgment dated 1st April, 2005 in a group of First Appeals, including First Appeal No.129/99.

15. The appellants shall be entitled to full compensation at the rate of Rs.19/- per sq. mt. (rupees nineteen per sq. mt.) in

respect of 307 sq. mts of land bearing survey no.105/13 and 60% of the compensation in respect of the remaining 795 sq. mts. of land bearing survey no.95/6.

16. The appellants shall be entitled to :

(i) a sum of 30% on the aforesaid market value by way of solatium;

(ii) an amount at the rate of 12% per annum on the above market value for the period commencing on and from the date of publication of the Notification under Section 4(1) of the Land Acquisition Act 1894 in respect of the subject land to the date of the Award of the Collector or the date of taking possession of the land, whichever is earlier;

(iii) interest on the excess awarded by this Court at the rate of 9% per annum from the date on which possession of the acquired land was taken till the date of payment of such excess amount for the period of one year from the date on which possession was

taken and;

(iv) interest at the rate of 15% per annum from the date of expiry of the said period of one year on the amount of such excess award.

17. No costs. The First Appeal as well as the Miscellaneous Civil Application stand disposed of in terms aforesaid.

R. M. LODHA, J.

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